IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6918 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRABEN KHUSALBHAI

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No. 6918 of 1996

MR VK JOSHI for Petitioner No. 1-3

MRS KETTY A MEHTA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/08/2004

ORAL JUDGEMENT

Heard learned advocate Mr.V.K.Joshi on behalf of the petitioners. None present on behalf of the

respondents when called out.

2. In the present petition, all three petitioners viz. [1] Hiraben Khuslbhai, [2] Ramiben Shivabhai and [3] Ichhaben Shivabhai have challenged the award passed by the Labour Court, Ahmedabad in Reference No.559 / 1990 dated 30th June, 1996, whereby the Reference has been rejected by the labour court. Main contentions raised by the petitioners are that at the time of terminating services of the workmen, Section-25-F has not been complied with, juniors workmen were continued in service, seniority list was not prepared and new employees were recruited by the respondent. It is also contention raised by the learned advocate Mr.Joshi that payment of notice pay and retrenchment compensation were not paid along with termination order but it was paid after period of two months.

3. Perused the award passed by the labour court which is impugned in the present petition and also considered the contentions raised by the learned advocate Mr.Joshi on behalf of the petitioners. On perusal of the award in question, it transpires that in respect of the workman viz. Icchhaben Shivabhai, finding is that payment of notice pay and retrenchment compensation was made by the respondent at the time of terminating services as per document Exh.22. So far as two rest of the workmen viz. Hiraben and Ramiben, offer was made by the respondent at the time of terminating services and they had not accepted the amount in question from the respondents. Therefore, considering this fact, the labour court has come to the conclusion that once offer has been made by the respondent while terminating services under Section 25-F of the Act, but in case of non acceptance of the same by the workmen, it amounts to sufficient compliance from the employer. Therefore, on that ground the order of termination cannot be set aside. The seniority list was produced before the labour court. The petitioners were not able to point out before the labour court that juniors were continued in service and new persons were recruited after their termination. One witness Shri Bhagwatbhai Bhikhabhai was examined vide Exh.15 who admitted in cross examination that services of in all more than 50 employees were terminated by the employer and as such, no juniors were continued in service and no such new recruitment was made by the respondent. The reason for termination as mentioned by the respondent that no work was available with the respondent and this being employees who are declared surplus and that is how termination order made by the respondent. This proved justification for termination.

Therefore, looking to the award, the labour court has considered both the aspects that order of termination is legal and valid and there is justification with the respondent to retrenchment the petitioners. The labour court has discussed the oral and documentary evidence in detail and also given proper appreciation to the said evidence as discussed in para-15 of the award and the labour court, ultimately, come to the conclusion that once the retrenchment has been legal followed by the employer and there was justification and bonafide termination by the employer, and therefore, the petitioners are not entitled to any relief claimed in the Reference. Ultimately, the labour court has rightly rejected the Reference.

4. The labour court has given cogent reasons in support of award and the conclusion so arrived. It is purely question of facts which rightly examined by the labour court on the basis of the evidence produced before the labour court by the respective parties. This Court while exercising the powers under Article 227 of the Constitution of India, cannot reappreciate the same as appellate authority. The finding given by the labour court is legal and valid and not baseless and perverse and as such, no illegality nor any irregularity apparently found to have been committed by the labour court and hence, no interference of this Court is warranted while exercising the powers under Article 227 of the Constitution of India.

5. In view of foregoing discussion, there is no substance in the present petition and the same deserves to be rejected and it is rejected accordingly.

Rule is discharged with no order as to costs.

6. At this stage, it is request made by the learned advocate Mr.Joshi that since amount of compensation, notice pay and other benefits due to the petitioners, are not paid by the respondents. If that is so, in such eventuality, the respondent is directed to pay the due amount if it is not paid to the employees concerned with two months from the date of receipt of copy of this order.

Direct Service is permitted.

Date : 11.8.2004 [H.K.Rathod, J.]

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